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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9317/2007

EX. COMMODORE NARINDER M.PANDIT Petitioner

Through Mr.Sukhjinder Singh, Adv.

versus

U.O.I & ORS Respondent

Through Ms.Jyoti Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE S.L.BHAYANA

Date of Decision 14.12.2007

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN J. (ORAL)

J U D G M E N T

1. The following Chargesheet was issued to the Petitioner:-

Enclosure 1
(Refers to Commanding Officer
Indian Naval Ship Angre's Letter
CM/203/602 19K/1 dated 09 Oct 03)

CHARGE SHEET

The accused, Commodore Narindra Mohan Munshiram Pandit (60219-K) Indian Navy, then belonging to Indian Naval Ship India Additional for duties as Director Clothing and Victualling, Naval Headquarters,

thereafter transferred to Indian Naval Ship Angre Additional for duties as Material Superintendent, Material Organisation, Mumbai, and presently attached in terms of Navy instruction 95/69 as Indian Naval Ship Angre Additional for duties as Officer on Special Duty to Admiral Superintendent Naval Dockyard, Mumbai, being a person subject to naval law, is charged for that he:-

(1) Did on 18th Jul 2002 knowingly make a fraudulent statement in a document, namely Temporary Duty Claim CG/3224/NM dated 18th Jul 02, for visit from Delhi to Mumbai and Halol and back to Delhi from AM 04 Jul 02 to PM 07 Jul 02, to be used for official purposes, to wit he claimed to have performed the journey from Mumbai to Halol and back by taxi and paid the fare for the same and that no free accommodation and messing was provided at the outstation, and thereby committed an offence punishable under Section 60(d) of the Navy Act, 1957.

(2) Did on 19th Aug 2002 knowingly make a fraudulent statement in a document, namely Temporary Duty Claim CG/3224NM dated 26th Aug 02 for visit from Delhi to Halol and Vapi/Mumbai and back to Delhi from AM 08 Aug 02 to PM 11 Aug 02 to be used for official purpose, to wit he claimed to have performed the journey from Vadodara to Halol and Halol to Mumbai by taxi and paid the fare for the same and that no free accommodation and messing was provided at the outstation, and thereby committed an offence punishable under Section 60(d) of the Navy Act, 1957.

(3) Did at about 2000 hrs on 19th Aug 2002, being a public servant posted as Director of Clothing & Victualling, Naval Headquarters, New Delhi, by abusing his position as public servant, obtain pecuniary advantage comprising Rs.1,40,000/- (Rupees One Lakh

Forty Thousand), for himself, from Mr. Manimoy Sarkar, representative of Safari Industries (India) Ltd. whose firm had been given orders for 5000 pieces of Size 26 Sailors Suitcases valued at approximately Rs.32 Lakhs vide CPRO (MB) Order No. MOPR/CMT-1/01098/087/2002/DG-29 dated 17 May 2002 and 8400 pieces Size 18 Sailors Suitcases valued at approximately Rs.35 Lakhs vide CPRO(MB) Order No. MOPR/CMT-1/01111/098/2002/DG-559 dated 15 Jun 02, at his residence 311, Block 23, Arjun Vihar, New Delhi, and thereby committed an offence under Section 13(1) (d) (ii) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(4) Did on 31st Aug 2002, being a public servant posted as Director of Clothing & Victualling, Naval Headquarters, New Delhi, possess pecuniary resources in his name to the extent that he deposited a sum of Rs.50,000/- (Rupees Fifty Thousand) by cash in the Savings Bank Account No.202346 in Syndicate Bank, Dhaura Kuan, New Delhi, which is disproportionate to his known source of income namely salary, for which could not satisfactorily account, and thereby committed an offence under Section 13 (1) (e) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(5) Did between 1st Dec 2002 and 31st Dec 2002, being a public servant posted as Director of Clothing and Victualling, Naval Headquarters, New Delhi, possess pecuniary resources in his name to the extent that he deposited a sum of Rs.3,55,000/- (Rupees Three Lakh Fifty Five Thousand) namely, Rs.80,000/- in the Savings Bank Account No. 007010100124720 in UTI Bank Ltd.,

Barakhamba Road, New Delhi, Rs. 25,000/- in the Savings Bank Account No.90552010094343 in Syndicate Bank, South Block, New Delhi and Rs.2,50,000/- in the Savings Bank Account No.1391150011498 in HDFC Bank Ltd., Gopinath Bazar, Delhi Cant, which is disproportionate to his known source of income namely salary, for which could not satisfactorily account, and thereby committed an offence under Section 13(1) (e) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(6) Did between 1st Mar 2003 and 31st Mar 2003, being a public servant posted as Material Superintendent, Material Organisation, Mumbai, possess pecuniary resources in his name to the extent that he deposited a sum of Rs.4,40,000/- (Rupees Four Lakhs Forty Thousand) namely, Rs.1,50,000/- in the Savings Bank Account No.002601040093 in ICICI Bank, Ghatkopar (East) Rs.50,000/- in the Savings Bank Account No.029010100100786 in UTI Bank Ltd., Ghatkopar, Rs.45,000/- in the Savings Bank Account No.1181150002264 in HDFC Bank, Ghatkopar, Rs.95,000/- in the Savings Bank Account No. 202436 in Syndicate Bank, Dhaula Kuan, New Delhi and Rs.1,00,000/- in Savings Bank Account No. 90552010094343 in Syndicate Bank, South Block, New Delhi, which is disproportionate to his known source of income namely salary, for which could not satisfactorily account, and thereby committed an offence under Section 13(1) (e) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(7) Was between 30th Mar 2003 and 8th April 2003, guilty of conduct unbecoming the

character of an officer by utilizing the services of M/s.Linkers India, Ghaziabad, product promoter and distributors for Reliance Industries Ltd., Ahmedabad and suppliers of uniform cloth to the Indian Navy, in that M/s. Linkers India, Ghaziabad paid Rupees 26,500/- towards the expenditure incurred by him in transporting his personal baggage through M/s.Gatisheel Packers & Movers, on his permanent transfer from New Delhi to Mumbai, and thereby committed an offence punishable under Section 54(2) of the Navy Act, 1957.

(8) Was at about 2000 hrs on 14th Apr 2003, guilty of conduct unbecoming the character of an officer in that he accepted a gift of Rs.25,000/- (Rupees Twenty Five Thousand) from Mr.Hemant R.Mehta, Partner of M/s. Hemant Engineering Works, Thane, manufacturers and suppliers of davits to the Indian Navy, at his residence in Material Organisation, and thereby committed an offence punishable under Section 54(2) of the Navy Act, 1957.

(9) Was at about 0800 hrs on 16th Apr 2003, guilty of conduct unbecoming the character of an officer in that he accepted a gift of Rs.15,000/- (Rupees Fifteen Thousand) from Mr.Sunil Mehta, Liaison Officer for M/s.Raksha Polycoats, Pune, suppliers of life jackets to the Indian Navy, at his residence in Material Organisation, and thereby committed an offence punishable under Section 54(2) of the Navy Act, 1957.

(10) Did at about 1500 hrs on 25th Apr 2003, being a public servant posted as Material Superintendent, Material Organisation, Mumbai, by abusing his position as public servant, obtain pecuniary advantage comprising Rs.8,000/- (Rupees Eight Thousand) for himself from Mr.Vijay Kumar

Singhal, Proprietor of M/s.Computer Stationery, Mumbai whose firm was supplying computer related items to the Indian Navy through the said Material Organisation, at his office in the said Material Organisation, and thereby committed an offence under Section 13(1) (d) (ii) of the Prevention of Corruption Act, 1988 punishable under Section 13(2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957.

(11) Was at about 2000 hrs on 22nd May 2003, guilty of conduct unbecoming the character of an officer in that he accepted a Travel Mate 230X Notebook from Mr.Syed Arshad Chisty, Regional Manager, Sales of Acer India (Private) Ltd., suppliers of Personal Computers to the Indian navy through the said Material Organisation, at his residence in Material Organisation, without paying for the same, and thereby committed an offence punishable under Section 54(2) of the Navy Act, 1957.

(12) Did at about 1800 hrs, on 1st Jun 2003, being a public servant posted as Material Superintendent, Material Organisation, Mumbai, by abusing his position as public servant, obtain pecuniary advantage comprising Rs.20,000/- (Rupees Twenty Thousand) for himself from Mr.Ashok Shah, Director, M/s.Morsum Coating Systems whose firm had a Rate Contract for supply of Heavy Duty Non Skid Grey Paint for the period 2002-2003 with the said Material Organisation, at his residence in Material Organisation, and thereby committed an offence under Section 13(1) (d) (ii) of the Prevention of Corruption Act, 1988 punishable under Section 13 (2) of the said Act, read in conjunction with Section 77(2) of the Navy Act, 1957."

sd/-

(Aspi Dhunjishaw Marker)
Commodore, Indian Navy
Commanding Officer,
Indian Naval Ship Angre

Indian Naval Ship Angre
Mumbai
03 Oct 03

2. Ten of the twelve Charges were held to have been proved. The Sentence passed by the Court Martial reads as follows:-

“The court having found the accused guilty of offences charged under section 13 (2) of Prevention of Corruption Act, 1988, r/w Section 77(2) of Navy Act, 1957, under section 60(d) of Navy Act, 1957, U/s. 54(2) of Navy Act, 1957, adjudges the said Commodore NM Pandit (60219-K), Indian Navy, of Indian Naval Ship Angre, to undergo Rigorous Imprisonment of 18 (eighteen) calendar months, to be dismissed from naval service, to forfeit 36 (thirty six) calendar months seniority in the rank of substantive Captain, and to pay a fine of Rupees Three Lakhs and to suffer consequential penalties involved”

3. Learned counsel for the Petitioner contends that since no sentence of dismissal with disgrace under Section 82(3) of the Navy Act, 1957 had been passed, the Petitioner is entitled to pension. In this connection reliance is placed by him on Section 82(3) of the Navy Act which stipulates that the punishment of imprisonment for a term extending to two years shall in all cases be accompanied by a sentence of dismissal with disgrace from the naval service. The provision leaves no room for discretion in such circumstances. In our view it does

not logically follow where punishment of imprisonment for a term below two years has been awarded a sentence of dismissal with disgrace cannot be prescribed. All that happens in such cases is that a specific decision regarding dismissal with disgrace has to be articulated. The contention which is thereafter raised is that the sentence must be imposed by a Court Martial. Reliance has been placed on *Lt.Col. (T.S.) Harbans Singh Sandhu -vs- Union of India*, which was decided on November 22, 1978 but was reported almost two decades later as (2002) 1 SCC 427. The editorial comments in the reporting draw attention to the decision of Supreme Court in *Union of India -vs- P.D. **Yadav*** (2002) 1 SCC 405. The relevant portion of **Yadav** are extracted below:-

“15.It is useful to look at the position of law emerging from various decisions. The facts of the case in *Lt.Col. (T.S.) Harbans Singh Sandhu v. Union of India*, W.P.No.553/1972, decided on 22.22.1978 were that a General Court Martial tried the petitioner and imposed a punishment of cashiering under Section 71(d) of the Army Act and no further punishment was imposed under Section 71(h) of the Army Act for forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose; he applied for grant of pensionary benefits; the authorities did not respond: hence, he filed writ petition seeking direction to the authorities for granting gratuity and pension due. Both the sides pointed to Regulation 16(a). From the records, it was found that no order had been passed under the said Regulation. In the absence of passing any order under Section 16 (a), the Court directed the

respondent to pay the sum due towards gratuity and pension. Under Section 71(h) a punishment of forfeiture of service for the purpose of pension could be passed but neither that punishment was imposed on the petitioner nor order was passed under Regulation 16(a) forfeiting his pensionary benefits. In those circumstances, the Court gave direction as stated above.”

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24. The argument that since no punishment was imposed under clause (k) by the authorities, although it could have been done, then there is no warrant to pass an order forfeiting pension under the Army Pension Regulations in respect of the same offence cannot be accepted. As already noticed above, the provisions relating to punishments under the Acts and the Pension Regulations operate in different fields. Clause (k) refers to forfeiture of arrears of pay and allowances and other public money due to a person at the time of cashiering or dismissal. Pension is one, which becomes due subsequent to retirement or termination of service subject to satisfying certain conditions of satisfactory qualifying service and if not otherwise disentitled from claiming pension. Firstly, clause (k) does not speak of pension as such; it speaks of all arrears, pay, allowances and other public money due to a person. It cannot be said that on the date of cashiering or dismissal there could be any arrears of pension. Section 73 of the Army Act enables the authorities to impose punishments in combination. Merely because punishment is not imposed under clause (h) or (k) of Section 71 and other punishments are imposed, it does not mean that the President is deprived of his power and jurisdiction to pass order under Regulation 16(a); so also the Central Government under Regulation 15(2) of the Navy Pension Regulations taking note of the punishment imposed under Section 81 of the Navy Act. In a case where punishment is imposed under Section 81(m) of the Navy Act forfeiting pension and/or gratuity, need for passing an order forfeiting pension under Regulation 15(2) of the Navy

(Pension) Regulations may not arise. But that does not mean that in cases of punishments imposed, which are covered by Regulation 15 of the Central Government is deprived of its power to pass appropriate orders under the said Regulation, when such power is specifically conferred on the Central Government under the very Regulations, which enables granting of pension and/or gratuity. It is rather not possible to accept the contention that a General Court Martial and confirming authorities imposing punishments can debar the President or the Central Government from passing orders as provided for specifically and expressly under the Pension Regulations.”

4. These observations are unequivocal authority against the Petitioner's contention. Accordingly, the concerned Authority is competent to decide or decline that notwithstanding that a punishment of imprisonment for only eighteen months has been prescribed, the dismissal can be treated as “with dishonour”, leading to the consequence of forfeiture of pension.

5. Annexure P-17 to the Petition is a letter dated 29th December, 2006 authored by the Commander, Joint Director, Pay and Pension (P & P). It refers to the Petitioner's representation dated 18.10.2005 for grant of pensionary benefits. It informs the Petitioner that a competent authority has rejected the request for grant of pensionary benefits under powers delegated by the Government of India, Ministry of Defence letter dated 14.8.2001. The said Order has been

annexed as Annexure P.19. Perusal of the Order discloses that Raksha Mantri had indicated the Approving Authority in the Service Headquarters in respect of the subjects covered by the Order. Pensionary Award to officers dismissed from service otherwise than with disgrace/cashiering is specifically itemized in the Order. It is these powers which have been exercised against the Petitioner.

6. Learned counsel for the Petitioner now contends that in view of the definition given to Central Government in the General Clauses Act it is only the President who could have delegated these powers. We are unable to accept this argument. In view of the decision in **Yadav** reliance on Rule 15 is of no avail to the Petitioner.

7. The Petition is without merit and hence dismissed.

(VIKRAMAJIT SEN)
JUDGE

DECEMBER 14, 2007
nt

(S.L.BHAYANA)
JUDGE